

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, September 15, 2021

Hearing Room 1675

11:00 AM
2:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

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<https://www.cacb.uscourts.gov/judges/honorable-robert-n-kwan> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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2:16-15322 Curtis C. Magleby

Chapter 11

#1.00 Cont'd hearing re: Disclosure statement
fr. 2/17/21, 3/31/21, 5/19/21

Docket 174

Tentative Ruling:

Updated tentative ruling as of 9/14/21. The court notes that the extended claims bar date of 8/31/21 has passed, and on 9/13/21, the United States Trustee filed another motion to dismiss or convert set for hearing on 10/27/21 based on procedural and substantive grounds, primarily for delay in confirming a plan. It appears to the court that since the case has been pending for over 5 years, debtor should be in a position to file a disclosure statement and proposed plan as progress has been made resolving disputes with creditors, such as with the former spouse in the marital dissolution action in state court, even if not all other disputes regarding claims have been resolved. Appearances are required on 5/19/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/12/21. No tentative ruling on the merits. Appearances are required on 5/19/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Curtis C. Magleby

Represented By
Illyssa I Fogel

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2:18-11475 Catherine Trinh

Chapter 11

#2.00 Cont'd hearing re: Creditor Baldwin Sun Inc.'s motion to allow late filed claims pursuant to Federal Rules of Bankruptcy Procedure Rule 9006(b) fr. 2/3/21, 6/9/21, 8/11/21

Docket 310

Tentative Ruling:

No updated tentative ruling as of 9/14/21. Appearances are required on 9/15/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Revised and updated tentative ruling as of 8/7/21. The court is inclined to sustain the objections of the plan trustee to the original declaration of Min Ng in the motion for lack of foundation, lack of personal knowledge, hearsay and improper legal conclusion, Federal Rules of Evidence (FRE) 602, 704, 801, 802 and 901. but the court notes that a supplemental declaration has been filed in the reply to address the evidentiary objections to the original declaration. However, the plan trustee has not had the opportunity to object to the supplemental declaration. The court is inclined to allow the plan trustee to file a sur-reply to address the amended declaration of Min Ng and movant's reply arguments.

As to the merits, movant will need to explain its argument on page 5 of the reply that "Since the Movant's claim became noncontingent upon the filing of its Motion and there was no timely objection to the Movant's claim, its claim was an allowed claim according to the Plan's definition." Reply at 5, citing Opposition, Ex. 5 at 4, note 6. This argument is based on a misreading of the confirmed plan and appears to lack merit.

Assuming arguendo the admissibility of supplemental declaration of Min Ng, movant may have a viable argument to allow late filing of its proof of claim pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 9006(b)(1) under the four factor test for excusable neglect under Pioneer Investment Services Co. v. Brunswick Associated Limited Partnership, 507 U.S. 380, 388-390, 395

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(1993) is met here: (a) the danger of prejudice to the debtor - there does not appear to be prejudice to the debtor, but possibly to other creditors who will have to share their pro rata distribution with the guaranty claimants; (b) the length of the delay and its potential impact on judicial proceedings - movant's motion to allow late filing of its proof of claim was filed in June 2019 about a year after the claims bar date set by the court in July 2018, but at least a year and a half before the plan was confirmed in January 2021, and was only a year and well before plan confirmation, and in the court's view, the delay of resolving the motion is not material as the parties to this contested matter stipulated to continuances of the hearing based on the global settlement discussions that eventually collapsed, which is not their fault; (c) the reason for the delay, including whether it was within the reasonable control of the movant - according to movant, while it knew of the claims bar date, it was aware that its claim was scheduled as contingent, but the contingency allegedly was not removed until after the bar date, and that explains why it did not file a proof of claim as the claim remained contingent at the bar date, but then filed the motion to file the late claim after the contingency was removed, otherwise, it could have filed a proof of claim, but listing it as contingent, which would have probably prompted an objection; and (d) whether the movant acted in good faith - movant appears to have acted in good faith in waiting for the contingency on its claim to be removed before seeking to file its proof of claim. Cf. Franchise Holding, II, LLC v. Huntington Restaurants Group, Inc., 375 F.3d 922, 927 (9th Cir. 2004) (the court does not view this case as dispositive because movant contends that it waited to move to file a late claim when the contingency was removed).

Plan confirmation does not appear to render the motion moot as if the motion was granted, movant would be allowed to file a late claim, which would be deemed allowed and entitled to a distribution under the plan unless a party in interest objects. The court does not address whether the claim is otherwise substantiated since that would be for resolution on an objection to the claim pursuant to FRBP 3007.

The court does not see the multiple continuances of the hearing on the motion as a ploy to lull movant into forgoing its rights as the delay from the continuances has no material impact on timeliness of the motion when originally filed, though it might be supposed that the plan trustee's argument

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that the resolution of the motion was unreasonably delay might suggest that. The plan trustee, or its predecessor in interest, creditor Second Generation could have obviated any alleged prejudice to them by not stipulating to continue the hearing and had the matter resolved before plan confirmation proceedings.

The court does not determine that the statements made in the supplemental declaration of Min Ng are admissible at this time, particularly as to whether the witness can authenticate the personal guaranty document or has personal knowledge of the removal of the contingency of the claim under FRE 602, 801, 802 and 901.

Appearances are required on 8/11/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

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2:18-11475 Catherine Trinh

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#3.00 Cont'd hearing re: Creditor Gia Phu Inc.'s motion to allow late filed claims pursuant to Federal Rules of Bankruptcy Procedure Rule 9006(b) fr. 2/3/21, 6/9/21, 8/11/21

Docket 312

Tentative Ruling:

No updated tentative ruling as of 9/14/21. Appearances are required on 9/15/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Revised and updated tentative ruling as of 8/7/21. The court is inclined to sustain the objections of the plan trustee to the original declaration of Nguyet Ng in the motion for lack of foundation, lack of personal knowledge, hearsay and improper legal conclusion, Federal Rules of Evidence (FRE) 602, 704, 801, 802 and 901. but the court notes that a supplemental declaration has been filed in the reply to address the evidentiary objections to the original declaration. However, the plan trustee has not had the opportunity to object to the supplemental declaration. The court is inclined to allow the plan trustee to file a sur-reply to address the amended declaration of Nguyet Ng and movant's reply arguments.

As to the merits, movant will need to explain its argument on page 5 of the reply that "Since the Movant's claim became noncontingent upon the filing of its Motion and there was no timely objection to the Movant's claim, its claim was an allowed claim according to the Plan's definition." Reply at 5, citing Opposition, Ex. 5 at 4, note 6. This argument is based on a misreading of the confirmed plan and appears to lack merit.

Assuming arguendo the admissibility of supplemental declaration of Nguyet Ng, movant may have a viable argument to allow late filing of its proof of claim pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 9006(b)(1) under the four factor test for excusable neglect under Pioneer Investment Services Co. v. Brunswick Associated Limited Partnership, 507 U.S. 380,

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388-390, 395 (1993) is met here: (a) the danger of prejudice to the debtor - there does not appear to be prejudice to the debtor, but possibly to other creditors who will have to share their pro rata distribution with the guaranty claimants; (b) the length of the delay and its potential impact on judicial proceedings - movant's motion to allow late filing of its proof of claim was filed in June 2019 about a year after the claims bar date set by the court in July 2018, but at least a year and a half before the plan was confirmed in January 2021, and was only a year and well before plan confirmation, and in the court's view, the delay of resolving the motion is not material as the parties to this contested matter stipulated to continuances of the hearing based on the global settlement discussions that eventually collapsed, which is not their fault; (c) the reason for the delay, including whether it was within the reasonable control of the movant - according to movant, while it knew of the claims bar date, it was aware that its claim was scheduled as contingent, but the contingency allegedly was not removed until after the bar date, and that explains why it did not file a proof of claim as the claim remained contingent at the bar date, but then filed the motion to file the late claim after the contingency was removed, otherwise, it could have filed a proof of claim, but listing it as contingent, which would have probably prompted an objection; and (d) whether the movant acted in good faith - movant appears to have acted in good faith in waiting for the contingency on its claim to be removed before seeking to file its proof of claim. Cf. Franchise Holding, II, LLC v. Huntington Restaurants Group, Inc., 375 F.3d 922, 927 (9th Cir. 2004) (the court does not view this case as dispositive because movant contends that it waited to move to file a late claim when the contingency was removed).

Plan confirmation does not appear to render the motion moot as if the motion was granted, movant would be allowed to file a late claim, which would be deemed allowed and entitled to a distribution under the plan unless a party in interest objects. The court does not address whether the claim is otherwise substantiated since that would be for resolution on an objection to the claim pursuant to FRBP 3007.

The court does not see the multiple continuances of the hearing on the motion as a ploy to lull movant into forgoing its rights as the delay from the continuances has no material impact on timeliness of the motion when originally filed, though it might be supposed that the plan trustee's argument

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that the resolution of the motion was unreasonably delay might suggest that. The plan trustee, or its predecessor in interest, creditor Second Generation could have obviated any alleged prejudice to them by not stipulating to continue the hearing and had the matter resolved before plan confirmation proceedings.

The court does not determine that the statements made in the supplemental declaration of Nguyet Ng are admissible at this time, particularly as to whether the witness can authenticate the personal guaranty document or has personal knowledge of the removal of the contingency of the claim under FRE 602, 801, 802 and 901.

Appearances are required on 8/11/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

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#4.00 Cont'd hearing re: Creditor Cong Ty May Vietmy's motion to allow late filed claims pursuant to Federal Rules of Bankruptcy Procedure Rule 9006(b) fr. 2/3/21, 6/9/21, 8/11/21

Docket 314

Tentative Ruling:

No updated tentative ruling as of 9/14/21. Appearances are required on 9/15/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Revised and updated tentative ruling as of 8/7/21. The court is inclined to sustain the objections of the plan trustee to the original declaration of Thi Tran in the motion for lack of foundation, lack of personal knowledge, hearsay and improper legal conclusion, Federal Rules of Evidence (FRE) 602, 704, 801, 802 and 901. but the court notes that a supplemental declaration has been filed in the reply to address the evidentiary objections to the original declaration. However, the plan trustee has not had the opportunity to object to the supplemental declaration. The court is inclined to allow the plan trustee to file a sur-reply to address the amended declaration of Thi Tran and movant's reply arguments.

As to the merits, movant will need to explain its argument on page 5 of the reply that "Since the Movant's claim became noncontingent upon the filing of its Motion and there was no timely objection to the Movant's claim, its claim was an allowed claim according to the Plan's definition." Reply at 5, citing Opposition, Ex. 5 at 4, note 6. This argument is based on a misreading of the confirmed plan and appears to lack merit.

Assuming arguendo the admissibility of supplemental declaration of Thi Tran, movant may have a viable argument to allow late filing of its proof of claim pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 9006(b)(1) under the four factor test for excusable neglect under Pioneer Investment Services Co. v. Brunswick Associated Limited Partnership, 507 U.S. 380, 388-390, 395

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(1993) is met here: (a) the danger of prejudice to the debtor - there does not appear to be prejudice to the debtor, but possibly to other creditors who will have to share their pro rata distribution with the guaranty claimants; (b) the length of the delay and its potential impact on judicial proceedings - movant's motion to allow late filing of its proof of claim was filed in June 2019 about a year after the claims bar date set by the court in July 2018, but at least a year and a half before the plan was confirmed in January 2021, and was only a year and well before plan confirmation, and in the court's view, the delay of resolving the motion is not material as the parties to this contested matter stipulated to continuances of the hearing based on the global settlement discussions that eventually collapsed, which is not their fault; (c) the reason for the delay, including whether it was within the reasonable control of the movant - according to movant, while it knew of the claims bar date, it was aware that its claim was scheduled as contingent, but the contingency allegedly was not removed until after the bar date, and that explains why it did not file a proof of claim as the claim remained contingent at the bar date, but then filed the motion to file the late claim after the contingency was removed, otherwise, it could have filed a proof of claim, but listing it as contingent, which would have probably prompted an objection; and (d) whether the movant acted in good faith - movant appears to have acted in good faith in waiting for the contingency on its claim to be removed before seeking to file its proof of claim. Cf. Franchise Holding, II, LLC v. Huntington Restaurants Group, Inc., 375 F.3d 922, 927 (9th Cir. 2004) (the court does not view this case as dispositive because movant contends that it waited to move to file a late claim when the contingency was removed).

Plan confirmation does not appear to render the motion moot as if the motion was granted, movant would be allowed to file a late claim, which would be deemed allowed and entitled to a distribution under the plan unless a party in interest objects. The court does not address whether the claim is otherwise substantiated since that would be for resolution on an objection to the claim pursuant to FRBP 3007.

The court does not see the multiple continuances of the hearing on the motion as a ploy to lull movant into forgoing its rights as the delay from the continuances has no material impact on timeliness of the motion when originally filed, though it might be supposed that the plan trustee's argument

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that the resolution of the motion was unreasonably delay might suggest that. The plan trustee, or its predecessor in interest, creditor Second Generation could have obviated any alleged prejudice to them by not stipulating to continue the hearing and had the matter resolved before plan confirmation proceedings.

The court does not determine that the statements made in the supplemental declaration of Thi Tran are admissible at this time, particularly as to whether the witness can authenticate the personal guaranty document or has personal knowledge of the removal of the contingency of the claim under FRE 602, 801, 802 and 901.

Appearances are required on 8/11/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

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#5.00 Cont'd hearing re: Creditor Shen-Shaoxing Tuchang Knitting Textile Co., Ltd.'s motion to allow late filed claims pursuant to Federal Rules of Bankruptcy Procedure Rule 9006(b) fr. 2/3/21, 6/9/21, 8/11/21

Docket 316

Tentative Ruling:

No updated tentative ruling as of 9/14/21. Appearances are required on 9/15/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Revised and updated tentative ruling as of 8/7/21. The court is inclined to sustain the objections of the plan trustee to the original declaration of Melissa Qu or Quin in the motion for lack of foundation, lack of personal knowledge, hearsay and improper legal conclusion, Federal Rules of Evidence (FRE) 602, 704, 801, 802 and 901. but the court notes that a supplemental declaration has been filed in the reply to address the evidentiary objections to the original declaration. However, the plan trustee has not had the opportunity to object to the supplemental declaration. The court is inclined to allow the plan trustee to file a sur-reply to address the amended declaration of Melissa Qu or Quin and movant's reply arguments.

As to the merits, movant will need to explain its argument on page 5 of the reply that "Since the Movant's claim became noncontingent upon the filing of its Motion and there was no timely objection to the Movant's claim, its claim was an allowed claim according to the Plan's definition." Reply at 5, citing Opposition, Ex. 5 at 4, note 6. This argument is based on a misreading of the confirmed plan and appears to lack merit.

Assuming arguendo the admissibility of supplemental declaration of Melissa Qu or Quin, movant may have a viable argument to allow late filing of its proof of claim pursuant to Federal Rule of Bankruptcy Procedure (FRBP) 9006(b) (1) under the four factor test for excusable neglect under Pioneer Investment

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Services Co. v. Brunswick Associated Limited Partnership, 507 U.S. 380, 388-390, 395 (1993) is met here: (a) the danger of prejudice to the debtor - there does not appear to be prejudice to the debtor, but possibly to other creditors who will have to share their pro rata distribution with the guaranty claimants; (b) the length of the delay and its potential impact on judicial proceedings - movant's motion to allow late filing of its proof of claim was filed in June 2019 about a year after the claims bar date set by the court in July 2018, but at least a year and a half before the plan was confirmed in January 2021, and was only a year and well before plan confirmation, and in the court's view, the delay of resolving the motion is not material as the parties to this contested matter stipulated to continuances of the hearing based on the global settlement discussions that eventually collapsed, which is not their fault; (c) the reason for the delay, including whether it was within the reasonable control of the movant - according to movant, while it knew of the claims bar date, it was aware that its claim was scheduled as contingent, but the contingency allegedly was not removed until after the bar date, and that explains why it did not file a proof of claim as the claim remained contingent at the bar date, but then filed the motion to file the late claim after the contingency was removed, otherwise, it could have filed a proof of claim, but listing it as contingent, which would have probably prompted an objection; and (d) whether the movant acted in good faith - movant appears to have acted in good faith in waiting for the contingency on its claim to be removed before seeking to file its proof of claim. Cf. Franchise Holding, II, LLC v. Huntington Restaurants Group, Inc., 375 F.3d 922, 927 (9th Cir. 2004) (the court does not view this case as dispositive because movant contends that it waited to move to file a late claim when the contingency was removed).

Plan confirmation does not appear to render the motion moot as if the motion was granted, movant would be allowed to file a late claim, which would be deemed allowed and entitled to a distribution under the plan unless a party in interest objects. The court does not address whether the claim is otherwise substantiated since that would be for resolution on an objection to the claim pursuant to FRBP 3007.

The court does not see the multiple continuances of the hearing on the motion as a ploy to lull movant into forgoing its rights as the delay from the continuances has no material impact on timeliness of the motion when

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originally filed, though it might be supposed that the plan trustee's argument that the resolution of the motion was unreasonably delay might suggest that. The plan trustee, or its predecessor in interest, creditor Second Generation could have obviated any alleged prejudice to them by not stipulating to continue the hearing and had the matter resolved before plan confirmation proceedings.

The court does not determine that the statements made in the supplemental declaration of Melissa Qu or Quin are admissible at this time, particularly as to whether the witness can authenticate the personal guaranty document or has personal knowledge of the removal of the contingency of the claim under FRE 602, 801, 802 and 901.

Appearances are required on 8/11/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley